

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

SODEXHO HEALTHCARE SERVICES, INC.
Employer¹

and Case No. 11-RD-676

DEBORAH DICKERSON, an Individual
Petitioner

and

UNITED STEELWORKERS, LOCAL 7898
Union²

DECISION AND ORDER

The Employer, Sodexho Healthcare Services, Inc., is a Delaware corporation that provides food services at the Georgetown Memorial Hospital in Georgetown, South Carolina. The Union, United Steelworkers, Local 7898, currently represents a bargaining unit comprised of all full-time and regular part-time food service employees, including dietary clerks and lead people at the Employer's Georgetown Memorial Hospital location. The Petitioner, Deborah Dickerson, filed this petition with the National Labor Relations Board (hereinafter Board) under Section 9(c) of the National Labor Relations Act seeking to decertify the Union as the collective bargaining representative for the above bargaining unit. A hearing officer of the Board held a hearing.³ The Union timely filed a brief with the undersigned.⁴

¹ The Employer's name appears as amended at hearing.

² The Union's name appears as amended at hearing.

³ The initial hearing in this matter was held on August 15, 2005. On August 23, 2005, the Acting Regional Director issued an Order Reopening the Record, for the purpose of securing evidence establishing the date on which the contract at issue, see *infra*, was signed. The reopened hearing took place on September 8, 2005.

⁴ At hearing on September 8, 2005, the Hearing Officer stated that briefs were due no later than September 14, 2005. Section 102.67 (a) of the Board's Rules and Regulations, however, provides that parties have seven days to file a brief after the close of the hearing. The Union's brief was received in the Regional office on September 15, and is, therefore, timely. Though Petitioner also timely filed a brief, she failed to comply with Section 102.67. In this regard, Section 102.67 (a) requires that the parties serve copies of their briefs on all other parties to the proceeding, and that a statement showing service is to be filed with the Regional Director together with any brief. Petitioner failed to attach a statement of service to her brief, thus, there is no evidence that her brief was properly served on the other parties. For this reason, Petitioner's brief will not be considered.

The sole issue presented is whether the collective bargaining agreement (hereinafter “contract”) between the Employer and Union bars the Petitioner’s petition to decertify the Union. The Employer and Union argue that the contract was executed and signed prior to the filing of the Petitioner’s decertification petition, and, therefore, bars the petition. In contrast, the Petitioner argues that the Employer and Union have failed to meet their burden, as there is insufficient evidence to establish that the contract was executed and signed before the filing of the decertification petition.

I have considered the evidence and arguments presented by the parties. As discussed below, I conclude that the contract between the Employer and Union bars the Petitioner’s petition. Accordingly, I will issue an order dismissing the petition. To provide a context for my discussion of this issue, I will first provide an overview of the collective bargaining history between the Employer and Union, including a discussion of the negotiations which resulted in the present contract. Second, I will provide my analysis, including a detailed discussion of the contract-bar doctrine. Finally, I will present my conclusions and findings on the issue presented.

I. COLLECTIVE BARGAINING HISTORY

In 2000, the Union became the certified bargaining representative of the employees employed by the Employer in the above-described unit. Thereafter, the Union and Employer negotiated and executed an initial five-year agreement that remained in effect from August 1, 2000, through July 31, 2005.⁵

In a letter dated April 18, the Union, pursuant to the provisions of the contract, notified the Employer of its desire to negotiate a new contract, as the current contract was set to expire July 31. The parties mutually agreed to meet on July 12 and begin negotiations. In preparation, Union President James Sanderson drafted proposals addressing such issues as employees’ probationary

⁵ All dates, unless otherwise stated, are in 2005.

period, work schedule, wages, benefits, holiday pay, sick days, vacation, health and safety, drug testing and the length of the new contract.

On July 12, the Union and Employer met at the Union hall to negotiate a new contract. Present on behalf of the Employer were James B. Feingold, Vice-President of Labor Relations; Thomas R. Malench, District Manager; and Jeff Malinski, Local Manager.⁶ Present on behalf of the Union were Larry B. Murray, International Staff Representative; and the local negotiating committee, which consisted of Sanderson, Richard Williams and Diane Herriott, Unit Chairperson. During this meeting, the parties exchanged several proposals. As proposals exchanged, Sanderson made personal notes on a pad of paper as well as on the formal document he had prepared which contained the Union's proposals on various issues. When the parties agreed on certain items, Sanderson wrote "TA" on the side of the item indicating that the parties had a tentative agreement on that particular item. There is no evidence that Sanderson shared any of his personal notes with the Employer's officials.

Once the parties reached a final agreement that day, all of the participants shook hands and verbally declared that they had reached a tentative contract. Sanderson wrote, "Done!! Deal T/A Contract," in his personal notes to confirm the agreement. The Employer agreed to incorporate the new proposals into a final draft of the contract and provide a copy to the Union. The parties did not sign any formal documents that day evidencing their tentative agreement. At the conclusion of the meeting, the Union provided the Employer with the signature page for the contract, which included the signatures of the Union's local negotiating committee. None of the Employer's officials endorsed the signature page that day, as the Employer wanted to make certain that the contract would be ratified by the membership.

⁶ Feingold testified that District Manager "Tom Malloy" was present on behalf of the Employer, in addition to himself and Malinski. I will assume there was an error in the record, as other documents in the record reference "Tom Malench" and Sanderson affirmatively testified that Malench was present during negotiations.

On July 13, the Union hand-delivered and posted a notice of special meeting to members informing them that the parties had reached a tentative contract and notifying them that a ratification vote would take place on July 23.

On July 15, Joni Hucker, Feingold's Administrative Assistant, sent an email to Sanderson with an attached draft of the contract and asked Sanderson to respond with any comments no later than July 19. Upon receipt, Sanderson sent an email to Feingold, with an attached copy of a summary sheet that he had prepared which reflected certain terms agreed upon during contract negotiations. In his email, Sanderson asked Feingold to review the attached summary sheet and "see if this is okay." To signify his approval, on July 15, Feingold instructed Hucker to initial and date the bottom of the summary sheet on his behalf, as he was in travel status. Hucker complied with Feingold's request and then forwarded the initialed summary sheet to Sanderson. That same day, Feingold sent an email to Sanderson confirming receipt of the summary sheet and further stated, "looks good, am on the road this afternoon, I will incorporate on Monday and resend to you, best regards." Upon receipt on July 21, Sanderson signed and dated the summary sheet and forwarded a finalized copy to the Employer. Following the July 15 exchange, there were no substantive changes to the contract.

On July 23, the membership had ratified the contract. On Friday, July 29, Sanderson telephoned Feingold and told him that the membership ratified the contract. Feingold, who was again in travel status, called Hucker that same day and instructed her to sign the signature page on his behalf and return it to Sanderson. Feingold also made a contemporaneous note on his calendar that the Georgetown contract was ratified and he needed to tell Hucker to sign the contract. Although during the hearing Hucker could not recall the exact date upon which she signed the contract for Feingold, she specifically recalled signing the document the same day that Feingold

called and instructed her to do so.⁷ Thereafter, Hucker forwarded the signed signature page to Sanderson. Sanderson testified that he received the signature page on August 13, following his specific request to Feingold for a copy after the filing of the petition herein.⁸ The new contract took effect August 1.

II. ANALYSIS

Through the years, the Board has established the contract-bar doctrine, which determines when the Board will “entertain petitions to displace an incumbent bargaining representative in the face of an outstanding collective bargaining agreement between the employer and the incumbent representative.” Hexton Furniture Co., 111 NLRB 342, 343-44 (1955). An executed contract having a fixed term of three years or less is a bar to an election for the entire duration of the contract. General Cable Corporation, 139 NLRB 1123, 1125 (1962). Contracts having fixed terms longer than three years will preclude an election only for the first three years of the agreement. Id. The burden to establish a contract bar rests with the party asserting that a contract bar exists. Roosevelt Memorial Park, Inc., 187 NLRB 517, 517-18 (1970); Bo-Low Lamp Corporation, 111 NLRB 505, 508 (1955).

The purpose of the contract-bar doctrine is two-fold. The first purpose is to give the parties to the agreement time to achieve “industrial stability” without the interference of outside parties who wish to change the bargaining relationship. Union Fish Company, 156 NLRB 187, 191 (1965). The second purpose is to give employees the freedom and opportunity to choose their bargaining representative at reasonable and predictable times. Id.

⁷ Hucker also recalled that she signed the final contract on Feingold’s behalf on a Friday, about two weeks after she initialed the summary sheet on July 15, which would have been on or about July 29.

⁸ There was no evidence presented as to why it took the Employer two weeks to forward a copy of the executed signature page to the Union.

A contract will bar a petition if the adequacy and the term of the contract are sufficient on the contract's face, without having to resort to parol evidence. Union Fish, 156 NLRB at 191-92; Appalachian Shale Products Co., 121 NLRB 1160 (1958). Generally, the Board will find a contract adequate if the following is present: (1) the contract is in writing; (2) the parties to the contract have signed the contract prior to the filing of the rival representation petition; (3) the contract contains substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; (4) the contract clearly encompasses the employees sought in the petition; and (5) the contract embraces an appropriate unit. Id. at 1161-64.

Here, the parties dispute the adequacy of the contract based on whether it was signed prior to the filing of the petition. Specifically, the Employer and Union contend that the contract was signed before the filing of the petition. The Petitioner asserts that the Union and Employer have failed to meet their burden, as there is insufficient evidence to demonstrate that the contract was signed on or before August 5.

I find that the evidence presented at hearing sufficiently established that the contract was signed before the filing of the petition on August 5. In this regard, Feingold testified that he received notice of ratification from the Union on July 29, and immediately thereafter, instructed Hucker, via telephone, to sign the contract on his behalf and return it to the Union. Feingold's testimony was further supported by the documentary evidence, that being his personal note on July 29 in his calendar indicating, "Georgetown ratified; tell Joni to sign." Hucker testified that she signed the contract the same day Feingold instructed her to do so.

The case here is distinguishable from Road & Rail Services, Inc., 344 NLRB No. 43 (2005), where the Board recently found that a petitioner raised sufficient uncertainty about whether a contract had been executed for bar purposes. In Road & Rail, the intervenor union and employer asserted that they had entered into a contract prior to the filing of the petitioner's petition. Id. at 3. The evidence showed that there were several agreements that were endorsed by

the parties, some of which contained different retirement provisions and some of which did not contain the signatures of all parties. Id. at 1-2.

The Board found that there were a myriad of uncertainties, including the following: 1) there was no direct evidence that the first agreement had been signed by the union on the date noted on the document, as the union's president indicated that he needed to further review the document and he did not testify at hearing that he in fact signed the contract on that date; 2) the retirement provisions in the first and second agreements differed; and 3) the union provided a copy of the alleged agreement to unit employees that did not contain the signatures of both parties. Id. at 3-4. The Board ultimately concluded that there was sufficient confusion "as to the date on which a contract worthy of bar purposes was signed," and subsequently reinstated the petition. Id. at 3.

The facts here are distinguishable from those in Road & Rail. First, Feingold, Hucker and Sanderson all testified about the date on which they signed the contract. Thus, there is direct evidence verifying the signatures and respective dates on which the contract was signed. Second, unlike the contracts presented in Road & Rail, where there were differing retirement provisions, following the approval of the Union's summary sheet, the only changes to the contract here were corrections of typographical errors. Finally, there is no evidence in the record of any inconsistent statements made by either the Union or Employer with regard to the existence of the contract.

As it is clear from the record that the contract was signed and executed before the petition was filed on August 5, I am dismissing the petition.⁹

⁹ In its brief, the Union makes two alternative arguments for finding a contract bar. First, the Union asserts that the initialed summary sheet contained substantial terms and conditions of employment and is sufficient to invoke the contract bar doctrine. Second, the Union asserts that the email exchange between the parties on July 15, 2005, evidences the parties' agreement. Because I have found that the contract was signed prior to the filing of the petition, there is no need to address these arguments.

III. CONCLUSION AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union involved claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act for the reasons set out above.

IV. ORDER

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by September 30, 2005. The request may not be filed by facsimile.

Dated at Winston-Salem, North Carolina, on the 16th day of September, 2005.

/s/ Howard D. Neidig, Jr.
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